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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act

Competitive Bidding

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PP Docket No. 93-253

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

Submitted by:

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Government and Industry
Affairs Committee

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SUMMARY

The Rural Cellular Association is an association comprised of small cellular operators providing service to rural America. The RCA's major concern is that the auction process not result in the award of spectrum primarily to larger "deep pocket" players. The FCC's tentative proposals generally disfavor the award of spectrum to the designated preference group and instead are tailored in a manner that favors larger companies by concentrating spectrum in the hands of a few. Consequently, the RCA urges the Commission to adopt safeguards to ensure that licenses are disseminated among a wide variety of applicants, including rural telcos and small businesses, and that service is rapidly deployed to rural areas.

With respect to the classification of services subject to bidding, the FCC should treat spectrum exclusively used as an "intermediate link" to provide an end-to-end service as a "private service" and exclude it from the competitive bidding process.

In regard to the bidding process, the RCA believes the Commission should only use oral bidding when auctioning spectrum for new services. The RCA opposes the Commission's proposal to award licenses in descending order of population beginning with the larger blocks of spectrum first. Instead, the opposite of this proposal should be adopted. Multiple blocks of spectrum in varying amounts should be auctioned in order of smaller spectrum blocks first beginning with the lesser populated areas first. All blocks of spectrum should be auctioned within each area before moving to the next most populated geographic area. The RCA opposes the FCC's

"combinatorial bidding" scheme because it favors "deep pocket" companies and again contradicts the legislative mandate.

With respect to treatment of the designated preference groups, the RCA believes that full payment less any deposit already submitted should be paid in full prior to the issuance of the license. Members of the designated preference group should be permitted two alternative payment options. One option would allow payment of the bid price over the term of the license and the other would allow an initial payment of twenty percent of the bid price less the already submitted deposit coupled with the payment of royalties equalling two percent of the gross revenue per year over the initial term of the license. Deposits for designated entities should be half of the required deposit for other bidders. In order to prevent unjust enrichment, the FCC should only permit the transfer of licenses among members of the designated preference groups until such time that applicable service benchmarks are met. To be eligible as a designated entity, the applicant must be 51 percent controlled by qualified designated entities.

The RCA urges the Commission to define a rural telco as a company with 50,000 or fewer access lines. Small telephone companies should be entitled to participate in the bidding process as designated entities outside their telephone service areas. Spectrum should be set aside exclusively for rural telcos. In addition and separate from the adoption of the rural telco set aside, the FCC should allow small rural telcos to apply to partition their telephone service area from the licensed area prior to construction by the successful bidder.

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COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), on behalf of itself and its members, respectfully submits the following Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") on October 12, 1993.

I. STATEMENT OF INTEREST

1. The RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country covering approximately 6.5 million in population. The majority of the area covered by RCA member companies is rural in nature. RCA member companies are eligible to provide Personal Communications Services ("PCS") and other telecommunications services in and outside of their cellular and local exchange service areas. Additionally, because of their affiliation with rural telephone companies, RCA member companies are part of the designated preference group that must be given "the opportunity to participate" in the provision of

spectrum-based services. NPRM at para. 72. Accordingly, RCA member companies will be directly affected by the rules adopted in this proceeding.

2. The NPRM raises many issues with respect to the implementation of the competitive bidding process. The RCA's major concern which permeates throughout these comments is that the auction process not result in the award of spectrum primarily to larger "deep pocket" players. Congress specifically intended that this not be the case when it mandated that the Commission's system of competitive bidding promote the following objectives:

1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and

2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Omnibus Budget Reconciliation Act of 1993 ("the Budget Act"), Section 309(j)(3). As will be discussed more fully below, the FCC's tentative proposals generally disfavor the award of spectrum to the designated preference group and seek to tailor the competitive bidding process in a manner that favors larger companies by concentrating spectrum in the hands of a few.

II. DEFINITION OF PRIVATE SERVICE

3. In accordance with the Budget Act, the Commission proposes to auction spectrum when 1) there are mutually exclusive applications and 2) the spectrum is used for service to paying

subscribers. Certain licensed services, such as private services, AM/FM broadcast services and television broadcast services are excluded from the competitive bidding process because the subscriber does not directly pay for the service. Services that have paying subscribers such as cellular service and PCS, are required to bid for the spectrum if there are mutually exclusive applicants.

A. Spectrum Exclusively Used As An "Intermediate Link" To Provide An End-to-End Service Should Not Be Subject To Competitive Bidding.

4. The Commission is perplexed with respect to the classification of spectrum used as an "intermediate link" in the provision of a continuous, end-to-end service to a subscriber. The Commission believes that if the spectrum is "used as an integral part of an end-to-end service offering enabling paying subscribers either to transmit directly or receive communications signals utilizing frequencies on which the licensee is licensed to operate" it meets the criteria established by the Budget Act to require competitive bidding, provided of course mutually exclusive applications for the spectrum are filed. The RCA disagrees with the Commission's analysis. The RCA asserts that some spectrum used as intermediate links, such as Point-to-Point Microwave Radio Service ("PPMRS") fall under the "private service" definition. Although the provision of the service is ultimately for commercial gain (like broadcast radio and television service), the service is not separately subscribed to by the subscriber and compensation is not directly paid by the subscriber. Accordingly, intermediate

links that are used in conjunction with other radio services for which the subscriber pays (i.e., cellular, Basic Exchange Telephone Radio Service, PCS) should be classified as private services for competitive bidding purposes. When there is no other underlying radio service for which the licensee is compensated, the spectrum used to provide the intermediate link should be auctioned. For example, Cable Antenna Relay Systems used to transmit programming and PPMRS facilities used to haul landline traffic are not used in conjunction with another licensed radio service. Accordingly, this spectrum would be subject to competitive bidding.

5. Alternatively, if the Commission decides to allow competitive bidding for spectrum used as an intermediate link by rural cellular licensees and other similarly situated licensees, the RCA maintains that in order to prevent speculation and undue enrichment, the Commission should adopt first-come, first-served filing procedures for the Point-to-Point Microwave Radio Service. Adoption of such a proposal will deter speculation and serve the public interest. The Commission has already adopted such a proposal in the Multipoint Distribution Service and has seen a decline of speculative applications filed.¹ The RCA respectfully submits that the adoption of this proposal will reduce the likelihood of speculative bidders and mutually exclusive applications. The viability of this proposal in rural areas is particularly apparent. Bidding for spectrum to obtain a microwave facility to use as an intermediate link for rural cellular service

¹Report and Order, 5 FCC Rcd 6410 (1990).

providers will unnecessarily add to the cost of providing service in rural areas.

6. Additionally, the Commission seeks comment on ". . . the number of situations where mutual exclusivity could arise in this context." NPRM at para. 29. In rural areas, the use of microwave radio service for hauling cellular traffic is frequently the only efficient way to provide cellular service. The cost of using copper wire or fiber is often not justifiable. Historically, PPMRS was established to serve areas where cost did not justify the use of copper wire. With the advent of PCS and numerous other radio driven technology, PPMRS in rural areas will become more and more sought after. Accordingly, it is likely that the number of mutually-exclusive applications will increase and the need to deter speculative filings along with it. Adoption of a first-come, first-served filing policy will deter speculators and decrease the need for competitive bidding. Competitive bidding would only be necessary if two applicants filed for the same frequency on the same day. Accordingly, if the Commission determines that spectrum used to establish intermediate links should be auctioned, the Commission should adopt first-come, first-served filing windows for services used to provide intermediate links.

III. COMPETITIVE BIDDING PROCEDURES

A. Open Oral Bidding Will Ensure Dissemination Of Licenses Among A Wide Variety of Applicants.

7. The Commission seeks comment on whether it should primarily utilize oral bidding when auctioning the spectrum. The

Commission is also considering the use of sealed bids for combinations of licenses in which case the sealed bid would not be opened until the oral bidding is complete. The RCA is vehemently opposed to combinatorial bidding and will address its concerns with this proposal more fully below. The RCA believes the Commission should only use oral (including electronic real time) bidding when auctioning the spectrum for new service offerings such as PCS. Sealed bidding should be used when awarding the spectrum for mutually-exclusive applications for existing services such as cellular unserved area, PPMRS and Specialized Mobile Radio ("SMR") are filed.² Accepting only sealed bids for existing, established services will prevent speculation by applicants seeking to obtain spectrum for the sole purpose of selling it back to the losing bidder.

8. In the event the Commission accepts sealed bids for new service offerings, the RCA respectfully submits that the Commission should not allow those bidders who present sealed bids to also participate in the oral bidding process. To permit sealed bidders to also participate in the oral bidding process would allow the sealed bidder to withdraw its higher sealed bid if it appeared as if the oral bidding would not be within range of the higher sealed bid. Accordingly, once a sealed bid is submitted, the sealed

² On November 8, 1993, the RCA submitted Comments in Implementation of Sections 3(n) and 332 of the Communications Act (Regulatory Treatment of Commercial Mobile Services), Notice of Proposed Rulemaking (PP Docket No. 93-252), released October 8, 1993 proposing a first-come, first-served filing window for PPMRS in order to prevent speculative mutually-exclusive applications being filed.

bidder should not be allowed to withdraw it in favor of making a lower oral bid.

B. The Sequence Of Bidding Should Be From Smaller Geographic Areas To Larger Geographic Areas And From Smaller Amounts Of Spectrum To Larger Amounts Of Spectrum.

9. The Commission correctly recognizes that if bidding is done sequentially, the order in which items are offered for bidding can affect the outcome. The Commission seeks comment on whether all spectrum blocks within a specific geographic region should be auctioned first or whether an entire spectrum block should be auctioned prior to the next block. In addition, the Commission seeks comment on whether spectrum should be auctioned in descending order of population, thereby allowing bidders to acquire the larger population areas before considering bidding on smaller areas. The Commission favors awarding licenses in descending order of population beginning with the larger blocks of spectrum first. NPRM at para. 53. The RCA opposes this bidding scheme because it clearly favors larger players and concentrates licenses in the hands of a few in direct conflict with the statute.

10. The Commission's stated objective, to "establish the sequence of bidding that is most likely to facilitate economically efficient aggregation of licenses across geographic regions and spectrum blocks while complying with the statute"³ is flawed and is in direct conflict with the legislation. The legislation does not require "geographic aggregation" of licenses. To the contrary, the legislation specifically states that in the design of a competitive

³ NPRM at para. 52.

bidding system the FCC must promote "economic opportunity and competition and [ensure] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants." Budget Act, § 309(j)(3)(B) (emphasis added). The implementation of any policy to foster the FCC's "geographic aggregation" objective clearly serves no other purpose than to help "deep pocket" players and will result in the concentration of spectrum in the hands of a few.

11. The RCA believes that the opposite of the Commission's proposal should be adopted. Multiple blocks of spectrum in varying amounts should be auctioned in order of smaller spectrum blocks first beginning with the lesser populated areas first. All blocks of spectrum should be auctioned within each area before moving to the next most populated geographic area. The RCA submits that this sequence of bidding will ensure that "deep pocket" bidders do not acquire all the large blocks of spectrum in largely populated areas and will serve the public interest and carry out the congressional mandate by 1) permitting the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and 2) permitting the accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority

groups and women.

C. Combinatorial Bidding Clearly Favors "Deep Pockets" And Does Not Foster The Award of Licenses To The Designated Preference Group.

12. As mentioned above, the Commission proposes to permit bidders to bid on groups of licenses through a sealed bid which would be opened after the oral bidding on individual licenses took place. If the sealed bid is higher than the total of the oral bids for the same licenses, the sealed bid would prevail. NPRM at paras. 57-63. The RCA submits that this "combinatorial bidding" proposal favors "deep pocket" companies and again contradicts the legislative mandate to disseminate licenses to a wide variety of applicants, including members of the designated preference groups. Moreover, the Commission's proposal to allow sealed bidders to place a limit on their expenditures if they win more than one license further exasperates the situation by allowing these bidders to bid more than they are willing to pay for the license. The RCA urges the Commission not to adopt its combinatorial sealed bidding proposal. If, however, the Commission allows combinatorial sealed bidding, the RCA urges the Commission to require the sealed bidder to provide a nonrefundable deposit if its bid is successful. Further, the sealed bidder should be barred from participating in the oral auction.

D. Minimum Bids Artificially Limit The Number Of Potential Service Providers

13. The RCA supports the Commission's proposal not to set minimum bids for licenses. Minimum bids would artificially limit

the number of potential service providers and as a result would not serve the public interest.

E. Full Payment Of The Bid Less The Deposit Should Be Submitted Prior To The Issuance Of The License. Members Of The Designated Preference Groups Should Be Eligible For Alternative Payment Methods.

14. The RCA agrees with the Commission's proposal to require full payment from all bidders except the designated preference groups (i.e., rural telephone companies, small businesses and businesses owned by minorities and females). The RCA believes that full payment less any deposit already submitted should be paid in full prior to the issuance of the license. Also, members of the designated preference group should be permitted to pay in full should they choose to do so.

15. Alternatively, members of the designated preference group should be permitted two different payment options.

Payment Option No. 1

Members of the designated preference groups should be permitted to make an initial down payment on their bid price upon receiving the license and then pay the remainder with interest over the term of the license. The RCA proposes that the down payment be ten percent of the bid price less the deposit already submitted.⁴ If the deposit exceeds ten percent of the overall bid price, the remainder of the bid price (principal) would be divided over the course of the term of the license and an initial down payment would not be required. Interest for the period should be tied to ten year U.S Treasury Bonds. By tying the interest rate to ten year U.S. Treasury Bonds, the Commission will not have to reevaluate the payments and the licensee would be able to budget the payments accordingly. If the licensee were to sell the

⁴ As is set forth more fully below in paragraph 26, the qualifying deposit for the designated preference group should be half of the amount paid by members not in the group.

license during the initial term, the remaining balance of the bid would be due and payable prior to Commission consent to the assignment of the license.

Payment Option No. 2

Members of the designated preference groups should be permitted to make an initial payment of twenty percent of the bid price less the already submitted deposit. If the deposit exceeds twenty percent of the overall bid price, there would be a refund to the bidder of that portion of the deposit. The licensee would then pay royalties equalling two percent of the gross revenue per year over the initial term of the license. If the licensee were to sell the license during the initial term, the remaining balance of the bid would be due and payable prior to Commission consent to the assignment of the license.

RCA respectfully submits that these alternative payment mechanisms promote the public interest and carry out the legislative mandate by ensuring the development and rapid deployment of new technologies, products, and services for the benefit of those residing in rural areas, as well as disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

F. To Fulfill Its Congressional Mandate, The Commission Must Adopt Rules That Ensure Participation By Rural Telcos.

16. RCA member companies are affiliated with rural telephone companies making them part of the designated preference group established by Congress in the Budget Act. The Budget Act requires the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in spectrum-based services, and for such purposes, consider the use of tax

certificates, bidding preferences, and other procedures."⁵ The FCC has tentatively concluded that "different approaches may be appropriate to address the specific concerns applicable to each enumerated entity." NPRM at para. 75. The RCA will confine its comments to the preferences it deems necessary to ensure participation by rural telephone companies ("rural telcos").

**a. The Definition Of A Rural Telephone Company
Should Be A Company With 50,000 Or Fewer
Access Lines.**

17. The Commission seeks comment on the definition of rural telco. The FCC proposes to define rural telco using existing Commission rules and policies. The FCC tentatively proposes that rural telcos be defined as "those carriers that are eligible for the exemption from the telephone company-cable cross ownership restrictions under Rule Section 63.58 of our Rules [footnote omitted]." NPRM at para. 75. The RCA respectfully submits that the FCC's proposal is inappropriate, unworkable and reflects a basic misapplication of the rules and concepts governing the cable-telco cross ownership exemption. As is set forth below, a definition based on the number of access lines owned by a telephone company is a more concise and workable definition, especially given the FCC's trend toward establishing larger licensed areas.⁶

⁵See Budget Act, Section 309(j)(4)(D).

⁶See Rules to Establish New Narrowband Personal Communications Services (First Report and Order), 8 FCC Rcd ____ (1993); Rules to Establish New Personal Communications Services (Second Report and Order), 8 FCC Rcd ____ (1993); and Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 Mhz Frequency Band (Notice of Proposed Rulemaking), PR Docket 93-144, released June 9, 1993.

18. The 2,500 population benchmark set forth in Rule Section 63.58 refers to the community the telephone company seeks to provide cable service to within its telephone service area not the size of the telephone service area.⁷ The Commission's proposal to define a rural telephone company as a company that has a telephone service area of 2,500 or less in population is not what Congress had in mind when it made rural telcos part of the preference group. Rather, it was the intent of Congress to award a preference to those who would ensure the development and rapid deployment of new technologies, products to the public including those residing in rural areas.⁸ Accordingly, Congress designated rural telcos and small businesses as part of the preference group.⁹

19. RCA member companies should qualify for a preference for two reasons -- they are affiliated with rural telephone companies and they are small businesses. As small businesses in the telecommunications industry, they are especially qualified to participate in the provisioning of spectrum-based services, particularly PCS. Accordingly, a more appropriate definition of eligibility for the preference can be found in the Commission's

⁷The RCA notes that the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") has tried to change the definition of "rural area" from 2,500 to 10,000. See OPASTCO Comments filed on October 13, 1992 in response to Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

⁸See Letter dated September 15, 1993, from Congressional Rural Caucus, U.S. House of Representatives to FCC Chairman James Quello.

⁹See Budget Act, Section 309(j)(4)(D).

established rules which provide defined treatment for small telephone companies serving rural areas.

20. Specifically, Rule Section 61.39 defines small telephone companies as those which serve fewer than 50,000 access lines.¹⁰ This definition is much more meaningful inasmuch as it was derived with reference to the telephone industry as a whole,¹¹ thereby corresponding with standards established by the Small Business Administration.¹² Companies qualifying under this definition should be eligible for all preferences accorded the designated group, both inside and outside of those areas where they provide telephone service.

b. Broadband PCS Channel Block C Should Be Set Aside Exclusively For Rural Telcos.

21. Pursuant to its legislative mandate, the Commission must disseminate licenses among a wide variety of applicants, including members of the designated preference groups. The Commission has tentatively concluded that different approaches may be appropriate for each of the enumerated preference groups. NPRM at para. 75. The RCA agrees with the Commission's assessment that the implementation of a set-aside could ensure the designated groups a meaningful opportunity to participate in the provision of PCS. With specific reference to Broadband PCS, the RCA respectfully

¹⁰47 C.F.R. § 61.39.

¹¹See generally In the Matter of Regulation of Small Telephone Companies, 64 RR 2d 309 (1987).

¹²See 13 C.F.R. § 121.601.

submits that in view of the past demonstration of quick deployment of cellular service to rural areas and the public interest served thereby that rural telephone companies be eligible to bid on the spectrum designated as Channel Block C (20 Mhz).¹³ This action will not only ensure that rural areas are served but will also promote the participation of rural telephone companies in the provision of state-of-the-art telecommunications services.

c. Rural Telephone Companies Should Be Allowed To Bid Outside Their Telephone Service Areas.

22. Inasmuch as there is no Congressional indication whatsoever that rural telephone companies should be confined to participate, or be confined to participate on a preferential basis, within their telephone service areas, the RCA respectfully submits that small telephone companies should be entitled to participate in the bidding process as designated entities outside their telephone service areas. The RCA suggests that this will further the stated Congressional objective to promote the participation of rural telephone companies in the provision of spectrum services. Moreover, confinement within telephone service areas would result in rural telephone companies suffering a severe disadvantage when compared to other members of the designated group which would not be geographically limited.

¹³The RCA will address this issue on reconsideration of Rules to Establish New Personal Communications Services, (Second Report and Order), 8 FCC Rcd ____ (1993).

- d. Rural Telcos That Participate And Lose In The Bidding Process Should Have The Option To Partition Their Existing Telephone Service Areas Out Of The Designated Market Area.**

23. In addition and separate from the adoption of the rural telco set aside, the RCA recommends a further method for promoting the inseparable goals of rapid deployment of service to rural areas and assurance of rural telco participation. The RCA respectfully submits that those small rural telephone companies which qualify as designated entities be allowed to apply to partition their telephone service area from the licensed area prior to construction by the successful bidder. The RCA submits that under this proposal, the partitioning rural telco would be required to participate in the bidding process (thereby assuring that the rural telco is financially qualified, part of the designated preference group and committed to providing service); file an application with the FCC to partition the market area (akin to the partial assignment applications that have been filed to divide up the cellular Rural Service Areas ("RSAs") among rural telcos located within the same RSA); and reimburse the successful bidder for the pro rata portion of the winning bid based upon the percentage of total population in the licensed area which reside within the telephone service area.

24. For example, with respect to broadband PCS, the blocks of spectrum to which this proposal would be applicable are the C and D Blocks which have already been set aside for the designated preference groups. Under the RCA's proposal, if a rural telco bidding on either or both of those licenses loses, it would have

that option of requesting the FCC to partition its rural telco service area out from the winning bidder's market and pay the FCC for the pro rata share of the area. Winning bidders would be cognizant of this possibility ahead of time because it would be incorporated in the Commission's rules. Adoption of this proposal will promote the public interest by ensuring the participation by rural telephone companies in the provision of PCS within their respective service areas as well as the rapid deployment of PCS to rural areas.

**e. The FCC Should Permit Transfer Of Licenses
Among Members Of The Designated Preference
Groups**

25. The Commission proposes to prevent unjust enrichment on the transfer of licenses awarded to members of the designated preference groups. NPRM at para. 84. Although the RCA recognizes the Commission's generalized concern, the RCA notes that there appear to be no statutory prohibitions regarding the transfer of a license from one designated member of the preference group to another; consequently, the Commission should not restrict transfers to other members of the designated preference group. In order to ensure achievement of the Congressional mandate that designated groups participate in the provision of service and to prevent concentration of ownership, the RCA suggests that any spectrum set aside specifically to members of the designated preference groups (e.g., the C and D Blocks in PCS) not be eligible for transfer to entities which are not themselves eligible for preferential treatment until such time that appropriate service benchmarks are

met. This rule would have the added benefit of minimizing trafficking and speculation abuse.

f. Deposits For Designated Entities Should Be Half Of The Required Deposit For Other Bidders.

26. The RCA suggests that implementation of the Commission's proposal to require substantial deposits to limit auctions to serious, qualified bidders should not be applied to rural telcos and other members of designated groups. NPRM at paras. 102-109. The RCA supports the Commission's effort to ensure rapid deployment of service; however, this is an appropriate area within which to apply preferential treatment, given the legislative emphasis on economic preferences. Accordingly, the RCA suggests that members of the designated group be required to submit not more than one-half the amount of deposit required of other bidders.¹⁴ Additionally, bid deposits made by members of the designated preference groups should be credited towards the purchase price for the successful bidder. Unsuccessful bidders should have their deposits returned.

27. Likewise, the Commission's proposal that winning bidders submit an immediate non-refundable payment of 20% of the bid at the conclusion of the auction should not be applied to the designated groups. NPRM at para. 104. The RCA proposes, instead, that members of the designated group be permitted to submit payment in accordance with the payment option plans set forth above in

¹⁴For example, if the Commission adopts the formula set forth in paragraph 103 of the NPRM (*i.e.*, 2 cents per Mhz per pop), the designated preference groups would only be required to submit half that amount as a deposit (*i.e.*, 1 cent per Mhz per pop).

paragraph 15 of these Comments. This proposal is consistent with and complimentary to the Commission's proposed deferral of auction payments. NPRM at para. 71.

g. To Be Eligible As A Designated Entity, The Applicant Must Be 51 Percent Controlled By Qualified Designated Entities.

28. The public interest is well served by implementation of preventive measures to ensure the integrity of the auction and licensing process. To that end, and on the basis of past experience with "B band" cellular settlement groups, the RCA submits that "51%-49%" deals that were offered to rural telephone companies by non-eligible entities in the cellular Rural Service Area licensing process help to ensure the rapid deployment of cellular service to rural areas. The RCA is concerned, however, that control not pass to non-eligible entities during the initial term of the license as was sometimes the case with the "B band" settlement groups. The RCA respectfully submits that while it is appropriate for the Commission to use this standard as a measure to determine ownership eligibility for a designated entity, the Commission should require control to remain with the eligible entity or a consortia of eligible entities. Accordingly, the RCA proposes that eligibility for preferences will be accorded only to consortia in which over 50 percent of control is in the hands of entities and/or persons which are individually eligible for award of the preferences. All ownership qualification rules should be carefully crafted to ensure that attributed affiliations with and

ownership by designated entities preserve preferential treatment to the beneficiaries intended by Congress.

G. The Commission's Application Procedures Should Ensure Prompt Provision Of Service To The Public.

29. The RCA supports the Commission's intent to adopt application procedures which promote the Congressional goal of prompt service to the public. NPRM at paras. 97 - 99. Consequently, the RCA agrees that a short-form application will reduce administrative processing burdens and enable the Commission to conduct auctions with greater speed. The RCA believes that the short-form application should include the basic identification information as delineated by the Commission in paragraph 98 of the NPRM. Additionally, the short-form application should include 1) certification that the applicant is legally qualified pursuant to Sections 309(a), 308(b), and 310 of the Communications Act; 2) certification that the applicant is financially qualified; and 3) certification that the applicant is a member of the designated preference group if the applicant intends to claim preferential treatment as a designated entity.

30. The FCC seeks comment on how it should handle requests for waiver of its rules with respect to spectrum that is subject to competitive bidding. NPRM at para. 99. The RCA suggests that waiver requests should not be considered until after the award of the spectrum and then should be dealt with by the Commission on a case-by-case basis. Requests that are determined to serve the public interest, convenience and necessity should be granted.